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EXAMINER

FADOK, MARK A

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/615,363
Filing Date: July 13, 2000
Appellant(s): BUNN ET AL.

Oleg F. Kaplun
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 12/12/2005 appealing from the Office action mailed 6/24/2005.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

The examiner is not aware of any related appeals, interferences, or judicial proceedings, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

No amendment after final has been filed.

(5) *Summary of Claimed Subject Matter*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Acknowledgement of the related Evidence Appendices

No evidence has been entered or relied upon in the present appeal.

(9) Acknowledgement of the related Proceeding

No decisions have been rendered regarding the present appeal or any proceedings related thereto.

(10) Evidence Relied Upon

5,848,399	Burke	12-1998
6,658,464	Reisman	12-2003
5,590,062	Nagamitsu et al	12-1996

(11) Grounds of Rejections to be Reviewed

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 12-15, 17, 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Burke (U.S. Patent No. 5,848,399).

Claims 12, 17: Burke teaches:

- a processor unit (Abstract);
- memory, coupled to said processor unit, storing an approximation of an image of said product (Abstract; col. 2 lines 45-59);

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- a visual sub-system, functionally coupled to said memory and defining a three - dimensional display area, that simulates said image for said user such that a three-dimensional visual representation of said product appears in said display space (Abstract);
- a monitor, functionally coupled to said processor unit, to display for viewing by said user a selection including each said product (col. 6 lines 23-50);and
- a sales unit, coupled to said processor unit, enabling said user to purchase said product (col. 6 lines 41-50).

Claim 13. Burke teaches said memory is network-coupled via said system (col. 5 lines 35-45).

Claim 14: Burke teaches said memory is coupled to said system via an Internet link (col. 5 lines 35-37), as encompassed by the teaching of This shopping service 65 may be supported by a cable television system, telephone system or other computer network.

Claim 15: Burke teaches simulation of at least one further characteristic for said product chosen from the group of characteristics consisting of sound, texture, mass, smell, temperature, and vibration, is provided said user (col. 7 lines 28-48).

Claim 27: Burke teaches said visual subsystem comprises a dome defining said three-dimensional display area (Abstract), in the teaching of A three-dimensional modeling and display system which takes size and location information from the retail space management system and generates three-dimensional models of each shelf and product and accesses the product database using the codes provided by the retail space management system to obtain images for each product. It generates a display of each product on each shelf by combining the obtained images and the generated three-dimensional models. The consumer may manipulate the display to change what is being viewed, to examine product packages and to purchase products.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Burke (U.S. Patent No. 5,848,399) as applied to claim 1 above, and further in view of Reisman (U.S. Patent No. 6,658,464).

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Claim 16: Burke does not explicitly teach simulation of at least two further characteristics for said product are provided said user. However, Reisman teaches A Web browser is an application running at the user's station which can access search engines, find and retrieve Web pages using URLs, and assemble the retrieved elements of text, graphics, sound and video, if present, into a coherent printable document or playable presentation (col. 35 lines 29-33). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify the teaching of Burke to explicitly teach simulation of at least two further characteristics for said product are provided said user, as taught by Reisman, for the motivation of presenting a virtual representation of a product for purchase by a user that portrays a user's desired characteristics to encourage its purchase.

Claims 21-26 and 28-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burke as applied to claims 12 and 17 above, and further in view of Reisman and Nagamitsu (U.S. Patent No. 5,590,062).

Claims 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33: Burke teaches said memory stores an approximation of a texture, and a simulation subsystem functionally coupled to said memory that simulates said texture for said user (col. 8 lines 25-39). Burke does not explicitly teach said memory stores an approximation of a sound, a smell, a mass, a temperature, or a vibration of said product, nor a simulation subsystem functionally coupled to said memory that simulates said sound, smell, mass, temperature, or vibration for said user. However, these aspects are taught in the prior art, for example: - Reisman teaches a Web browser is an application running at the user's station which can access search engines, find and retrieve Web pages using URLs, and assemble the retrieved elements of text, graphics, sound and video, if present, into a coherent printable document or playable presentation (col. 35 lines 29-33).

- Nagamitsu teaches a computer technology, which has rapidly advanced in recent years, has been adopted to perform an evaluation on 3-D (three-dimensional) living environments by producing virtual living environments. This enables a quick, inexpensive evaluation on the air-conditioning, lighting, sound, etc. This is so-called a computer simulation. Moreover, the simulator enables one to easily experience a simulation in a realistic way by producing a virtual space called a virtual reality using the simulation result. Thus, a massive amount of analysis data necessary at the time of planning can be collected efficiently. The simulation is considered to be used to a proposed-type sales technique; and users such as customers (residents-to be) or a sales man experience a simulation of housing environments prior to construction. (col. 1 lines 43-57)

These teachings encompasses applicant's claimed aspects of said memory stores an approximation of a sound, a smell, a mass, a temperature, or a vibration of said product, and a simulation subsystem functionally coupled to said memory that simulates said sound, smell, mass, temperature, or vibration for said user. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify the teaching of Burke to explicitly teach said memory stores an approximation of a sound, a smell, a mass, a

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temperature, or a vibration of said product, and a simulation subsystem functionally coupled to said memory that simulates said sound, smell, mass, temperature, or vibration for said user, as taught by Reisman and Nagamitsu, for the motivation of providing the user/customer products for purchase in a manner that user can realistically perceive the product as if it were in front of the user/customer and influence the user's/customer's purchase.

(12) Response to Argument

Claims 12 and 17

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the specific three dimensional display area that is defined in the specification that gives the appearance of the images occupying a space defined by the dome or physical devices that make up the simulation subsystems) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant argues that the cited references do not teach the instant invention because the disclosure of the instant invention describes an illustration of one embodiment where the subsystems are disclosed as physical devices that encompass a physical three dimensional space within a dome, and physical devices that produce texture, smell, temperature and vibration (see figures 2-16). The applicant's specification only suggests certain embodiments of subsystems and does not define

only one that may be used to produce the claimed invention, therefore, the subsystem is open to interpretation from one of ordinary skill in the art as is suggested by applicant on page 24, lines 20-25 of the specification. The examiner contends that the scope of the claims, as currently presented, reads on the cited art, for instance:

Applicant previously argued that a television is not a three-dimensional display area and thus Burke does not teach "a three-dimensional display area, that simulates said image for said user such that a three dimensional visual representation of said product appears in the display area". The examiner notes that Burke produces a three-dimensional display area in the shelves and produces a three dimensional image (see additionally figure 11). The examiner agrees that the television itself is not the display area, but rather the display area is defined within the three dimensional viewing environment created within the television monitor.

Claims 16,21-26 and 28-33

In response to applicant's argument that Reisman is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Both Burke and Reisman are both concerned with the electronic display of product information.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant infers that the "at least two further characteristics for said product" of claim 16 must be from the list given in claim 15, however, there is no antecedent basis for this conclusion, therefore at least two additional characteristics in text, graphics, sound and video are provided by Reisman.

Applicant further argues that Nagamitsu only provides visual means for simulation of living environment characteristics such as air-conditioning, lighting and sound. Once again the examiner contends that the scope of the claims, as currently presented, reads on the cited art due to the breadth of the claims.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Mark Fadok', with a long horizontal flourish extending to the right.

Mark Fadok
Primary Examiner

February 8, 2006

Conferees

Wynn Coggins 
SPE AU 3625

John Weiss 
Appeals Specialist
SPE AU 3629